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THE CONSTITUTION OF THE
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Sung Yoon Cho

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THE CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Introduction

The first Constitution of the Democratic People's Republic of Korea (DPRK), which was patterned after the 1936 Soviet Constitution, was enacted on September 8, 1948. It consisted of 104 Articles in 10 Chapters and underwent several minor revisions in the years 1954-1962. ^{1/} On December 27, 1972, a new, extensively revised constitution was adopted, which consists of 149 Articles in 11 Chapters and remains in effect today. At the first session of the Fifth Supreme People's Assembly on December 25, 1972, Kim Il-sŏng explained the need for constitutional reform:

Our realities today urgently demand the establishment of a new Socialist Constitution to legally consolidate the tremendous achievements of our people in the socialist revolution and in building socialism and to lay down principles for the political, economic and cultural spheres of socialist society. ^{2/}

Thus, the new Constitution that replaced the so-called "people's democratic" Constitution of 1948 was designed to suit the needs of a socialist system of government.

As for the content of the new socialist Constitution, Kim Il-sŏng further declared that it

^{1/} There are conflicting statements about the number of constitutional revisions made before 1972. Of four articles in English on the subject, for example, one says that there were altogether four amendments made, two say there were five, and the fourth says there were six.

^{2/} Kim, Il-sŏng, Let Us Further Strengthen the Socialist System of Our Country 2 (Pyongyang, Foreign Languages Pub. House, 1972), as compared to the Korean text.

...correctly reflects the achievements made in the socialist revolution and in building socialism in our country, defines the principles to govern activities in the political, economic and cultural fields in socialist society and the basic rights and duties of citizens, and stipulates the composition and functions of the state organs and the principles of their activities. It is to protect by law the socialist system and dictatorship of the proletariat.... ^{3/}

The first three Chapters, embodying 48 Articles on politics, the economy, and culture, are a kind of theoretical preface that outlines the nature of the state under the new Constitution; the 1948 Constitution covered politics, the economy, and culture in a single chapter of 10 Articles, under the rubric "Fundamental Principles." Chapter 4 outlines the basic rights and duties of citizens (Arts. 49-72), while Chapters 5 through 10 (Arts. 73-146) spell out the formal structure of government by defining the powers, functions, and responsibilities of State organs. Chapter 11 (Arts. 147-149)

^{3/} Kim Il-sŏng, supra note 2, at 35, as compared to the Korean text. Many articles have been written on the 1972 Constitution in Korean, Japanese, and English. Two collections of essays by North Korean writers are of special interest: Chae-muk Chu, ed., Chosŏn Minjujuŭi Inmin Konghwaguk sahoejuŭi hŏnpŏp ūn sahoejuŭi kŏnsŏl ūl him ikke taguch'ilsu ikke hanŭn wiryŏk han mugi [The Socialist Constitution of the DPRK Is a Powerful Weapon for Strengthening the Socialist Constitution] (Pyongyang, Kwahak Paekkwa Sajŏn Ch'ulp'ansa, 1978); Chosŏn Minjujuŭi Inmin Konghwaguk sahoejuŭi hŏnpŏp yŏn'gu nonmunjip [A Collection of Essays on the Socialist Constitution of the DPRK] (Pyongyang, Sahoe Kwahak Ch'ulp'ansa, 1973).

The following publications in English are also worthy of note: Ku-jin Kang, "An Analytical Study on the North Korean Socialist Constitution," 2 Korea and World Affairs 126-157 (1978); Chin Kim and Timothy G. Kearley, "The 1972 Socialist Constitution of North Korea," 11 Texas International Law Journal 113-135 (1976); Ilpyong J. Kim, "Constitutional Development in North Korea," 2 Journal of Korean Affairs 31-38 (1973); Chong-Sik Lee, "The 1972 Constitution and Top Communist Leaders," in Dae-Sook Suh and Chae Jin Lee, eds., Political Leadership in Korea 192-219 (Seattle, University of Washington Press, 1976); Chin-wee Chung, "The Evolution of a Constitutional Structure in North Korea," in Robert A. Scalapino and Jun-yŏp Kim, eds., North Korea Today: Strategic and Domestic Issues 19-42 (Berkeley, Institute of East Asian Studies, 1983); Masao Fukushima, On the Socialist Constitution of the DPRK (Pyongyang, Foreign Languages Pub. House, 1975); Youn-Soo Kim, "The 1972 Socialist Constitution of the Korean Democratic People's Republic," 3 Review of Socialist Law 281-296 (1977).

deals with the country's emblem, flag, and capital, the latter now in Pyongyang, having been in Seoul under the 1948 Constitution.

This essay will focus on the salient features of the 1972 Constitution of the DPRK, namely, its fundamental principles, provisions on state structure, administration of justice, and the basic rights and duties of citizens. A special attempt will also be made to compare the 1948 and 1972 North Korean Constitutions and to point out any new developments since the adoption of the latter. A comparison between the North Korean Constitution and those of other socialist countries, while instructive, lies beyond the scope of this paper. ^{4/}

Fundamental Principles

Politics

Chapter 1 of the Constitution of the DPRK deals with politics, and begins with the declaration that the DPRK is a socialist state (Art. 1). The DPRK is described as a tripartite political entity comprised of a worker-peasant alliance led by the workers, socialist production relations, and an independent national economy (Art. 2). Article 7 states that "the sovereignty of the DPRK rests with the workers, peasants, soldiers and working intellectuals." This is in contrast to Article 2 of the 1948 Constitution, which simply provided that "the sovereignty of the DPRK resides in the people."

^{4/} For a comparison of the 1972 North Korean Constitution with other socialist constitutions, see Chin Kim and Timothy G. Kearley, *supra* note 3; John N. Hazard, "A Comparativist's View of the 1972 Constitution of the Democratic People's Republic of Korea," 7 Studies in Comparative Communism 74-82 (1974).

The new Constitution reflects the many changes made in North Korean society and state policy in the intervening years between 1948 and its adoption in 1972. One of its key features is the settlement of a controversy over the "transition period" and its relation to the future of the dictatorship of the proletariat. ^{5/} The 1972 Constitution was enacted at a time when there was debate as to whether or not the transition to socialism had been completed. If the transition were complete, some argued, perhaps a proletarian dictatorship and class struggle were no longer necessary. Premier Kim Il-sŏng considered this stance to be "rightist," yet at the same time he disagreed with those who argued that the transition period should last until a totally classless society had been created and the distinction between workers and peasants eliminated. Kim attempted to resolve the issue by stating that the establishment of a socialist system did not in itself mean that there had been a complete victory. He declared that although the cause of socialism had been advanced in the years since 1958, the proletarian dictatorship should continue because a truly classless society had not yet been achieved. ^{6/} Kim's view was codified in Article 10 of the Constitution, which states: "The Democratic People's Republic of Korea exercises the dictatorship of the proletariat...."

The nature of relations with other socialist states is a second major area of difference in spirit between the two constitutions. The 1948 document had been based on the Soviet Constitution of 1936 and was written at

^{5/} Ilpyong J. Kim, supra note 3, at 34.

^{6/} Kim Il-sŏng, On the Question of the Period of Transition from Capitalism to Socialism and the Dictatorship of the Proletariat 17 (Pyongyang, Foreign Languages Pub. House, 1969).

a time when Soviet influence was strong. After the Sino-Soviet split, however, there were pro-Soviet and pro-People's Republic of China factions in Pyongyang. Kim Il-sŏng decided to develop an independent Marxist program that would enable Pyongyang to stand apart from both Moscow and Peking. ^{7/} He called his policy, formulated in 1966, chuch'e [self-reliance]. It is written into Article 4 of the 1972 Constitution:

The Democratic People's Republic of Korea is guided in its activity by the Juche [chuch'e] idea of the Workers' Party of Korea, a creative application of Marxism-Leninism to the conditions of our country.

Article 4 implies that the Party is superior to the state, thereby providing the constitutional grounds for Party leadership over the country and its relations with other states.

The importance of the concept of chuch'e was further elaborated in the following terms:

It [chuch'e] forms the ideological, theoretical, and methodological foundations of all the lines, policies, and activities of the Republic and indicates the fundamental principles for the most correct solution of all the problems arising in the revolutionary struggle and construction work. At the same time, it serves as a sure guarantee for the thorough maintenance of the revolutionary principles of independence, self-sustenance, and self-defense in all realms of politics, economy, and military affairs of the Republic. ^{8/}

Other related concepts incorporated into the chapter on politics are the Ch'ŏngsan-ni method and the Ch'ŏllima Movement. The Ch'ŏngsan-ni method or Ch'ŏngsan-ni spirit is to apply to every aspect of political work "to guarantee that the upper units help the lower, the masses' opinions are

^{7/} Ilpyong J. Kim, supra note 3, at 33.

^{8/} Masao Fukushima, supra note 3, at 190.

respected and their conscious enthusiasm is roused by giving priority to political work, work with people" (Art. 12). The Ch'ŏngsan-ni method is said to have been developed by Kim Il-sŏng after he stayed at the Ch'ŏngsan-ni cooperative farm outside Pyongyang in February 1960. A team of scholars and students had been sent to the farm to evaluate the difficulties facing farmers there. They attributed the problems to "commandism" in local government and to the actions of Party cadres; their solution was in part Maoist: leaders should "go to the masses" for guidance and to discuss production problems. ^{9/}

The Ch'ŏllima Movement is defined by the Constitution as "the general line in the building of socialism" designed to accelerate "socialist construction to the maximum" (Art. 13). The movement was initiated by Kim Il-sŏng after he visited the Kangsŏn Steel Mill in South P'yŏngan Province in February 1956. "Ch'ŏllima" means "Flying Horse," a reference to a legend about a flying horse that could gallop great distances in one day. The campaign was later directed towards agricultural as well as industrial workers, and special titles were given to work units and individuals whose performance was particularly impressive. The Flying Horse Movement is similar to Stalin's "Stakhanovite" Movement and reflects the same faith in human accomplishment as Mao's "Great Leap Forward." ^{10/} The movement was initially intended to help accomplish the goals of the 1957 Five-Year Plan. In May 1959, it was renamed the Ch'ŏllima Work Team Movement. Although it remains in the Constitution, the Ch'ŏllima Movement has been largely replaced by another

^{9/} Robert A. Scalapino and Chong-Sik Lee, Communism in Korea 562-563 (Berkeley, University of California Press, 1972), pt. 1.

^{10/} Id. pt. 2, at 1115.

propaganda campaign called the Three Revolutions Team Movement, which began in February 1973. 11/

Since 1973, the Three Revolutions Team Movement has been viewed as the basic method to be used for building a society based on the idea of chuch'e. The movement was intended to eliminate the remnants of the former society through an acceleration of ideological (Art. 11), technical (Art. 25), and cultural (Art. 36) revolution. Kim Il-sŏng's pivotal work on the subject, "Let Us Further Accelerate Socialist Construction by Powerfully Carrying Out the Three Revolutions" of March 3, 1975, is still being quoted. For example, a March 1985 newspaper article in Nodong sinmun stated that the work is still significant because in it Kim expounds the historical inevitability of the three revolutions, pointing out that ideological, technological, and cultural revolution constitute the three aspects of the general line of socialist and communist construction and should be continued by future generations.

The Economy

Chapter 2 of the 1972 Constitution, in 17 Articles, deals exclusively with economic matters, in contrast to the 1948 Constitution, which lacked a separate chapter on the subject of the economy. Article 2 declares that the DPRK rests on the foundation of an independent national economy, defined by the Constitution as a planned economy based on socialist laws of economic development (Art. 31) achieved through the "historic task" of

11/ For more information on the topic, see Sŏng-nim Yi, "Three Revolutions for Building a Communist Society After Going Through the Transitional Stage of Socialist Society," 5 Sahoe kwahak 27-32 (Sept. 1983); Tai Sung An, North Korea: A Political Handbook 57 (Wilmington, Scholarly Resources, 1983).

industrialization (Art. 24). Three important features of Chapter 2 are the new definition of property, the introduction of the Taean work system, and the abolition of taxation.

The Constitution recognizes three types of ownership: state property, cooperative property, and private property. State property is the property of the entire people (Art. 19). It includes all natural resources, major factories and enterprises, harbors, banks, means of transport, and communications facilities. In theory, there is no limit on what the state may own. Thus, state property differs from cooperative property and private property, which are limited. Cooperative property, or property of cooperative organizations, includes land, draught animals, farm implements, fishing boats, and buildings, as well as small and medium factories and enterprises (Art. 20). Cooperative ownership is a form of ownership of transitional character; it is bound to be converted gradually into ownership by the entire people (Art. 21). Private property is property for the personal use of the working class. It primarily consists of "the products from the inhabitants' supplementary husbandry, including those from the small [vegetable] plots of cooperative farmers" (Art. 22). This property is derived mainly from socialist distribution according to work done and from additional benefits accorded by the state and society. Under the 1977 Land Law of the DPRK ^{12/} the size of family plots is 20-30 p'yŏng (66-99 square meters).

Since the 1972 Constitution states that all means of production are owned by the state and cooperative organizations (Art. 18), the scope of private ownership is severely limited. The 1948 Constitution allowed a certain

^{12/} The Land Law, Apr. 29, 1977; came into force on June 1, 1977.

amount of private ownership by those who worked the land or operated small-scale means of production as well as private ownership by small-scale enterprises and commercial organizations; the 1972 Constitution entirely abandoned recognition of this kind of personal property.

The Tae'an work system, the basic economic model for the nation, is described in Article 30, which provides:

The State directs and manages the nation's economy through the Tae'an work system, an advanced socialist form of economic management whereby the economy is operated and managed scientifically and rationally on the basis of the collective strength of the producer masses....

It was implemented as the system for management of state enterprises in December 1961. Its name derives from a visit made by Kim Il-sŏng to the Tae'an Electrical Appliance Plant in 1961. The Tae'an work system has been described as an adaptation of the Ch'ŏngsan-ni method (a form of management designed for agriculture) to industry. Workers are in theory to become involved in the process of management. While production goals are still set by planning officials, the methods of implementation of those goals are supposedly to be determined by collective leadership.^{13/} This system is designed to replace the "one-man" management system of enterprises which preceded it. The latter had been blamed for such administrative inefficiencies as duplication of effort, delays in procurement, and excessive "bureaucratism." The Tae'an system has been combined with an effort to bring political control into factory leadership, so that the latter becomes a vehicle for Party control. Thus, each factory is run by a Party committee.

^{13/} Scalapino and Lee, supra note 10, at 1245-1247. See also Ilpyong J. Kim, "The Mobilization System in North Korean Politics," 2 Journal of Korean Affairs 12-14 (1972).

The third major area provided for in Chapter 2 of the North Korean Constitution is the abolition of all taxes. The first step in the process had been the elimination of the agricultural tax-in-kind, which had been imposed by the Decision Concerning Agricultural Tax-in-Kind and originally set at the rate of 25 percent; it had been reduced to an average of 20.1 percent, then further reduced to 8.4 percent, and finally eliminated in 1966. ^{14/} North Korean authorities frequently cited the abolition of the agricultural tax-in-kind as evidence of the emancipation of the peasant. All other taxes were abolished on April 1, 1974, by virtue of a law adopted 11 days earlier. The regime then boasted that North Korea was the first country in the world to be without a taxation system.

The abolition of taxes was part of the implementation of the Constitution of 1972, which states in Article 33 that "the State abolishes taxation, a relic of the old society." Details of the implementation plan can be found in the report of the Vice-Premier at the time, delivered at the Third Session of the Fifth Supreme People's Assembly. ^{15/} It was at that session, on March 21, 1974, that the Law on the Complete Abolition of the Taxation System was adopted. ^{16/}

Culture

Chapter 3 of the 1972 Constitution, on the subject of culture, was not in the 1948 version. It reflects the political themes of the early 1970s

^{14/} Scalapino and Lee, supra note 10, at 1097.

^{15/} Chōsen Minshu Shugi Jinmin Kyōwakoku juyō hōreishū [A Collection of Laws and Ordinances of the DPRK] 80-104 (Tokyo, Chosen Daigaku, 1979).

^{16/} Id. at 27.

in North Korea by stressing the chuch'e principle and declaring that the DPRK "builds a true people's revolutionary culture which serves the socialist working people" (Art. 37). Some of the provisions in the chapter deal with the educational system, establishing a program of one year of universal pre-school education plus 10 years of universal, compulsory, free education (Arts. 43, 41). In contrast, the one article on education in the 1948 Constitution had only called for universal and compulsory education at the elementary level (Art. 18). Both documents mention stipends for students at higher levels (Art. 18, Constitution of 1948, and Art. 42, Constitution of 1972).

Other topics covered in the chapter on culture include strengthening scientific research and creative cooperation (Art. 44), developing "Juche-oriented, revolutionary literature and art, national in form and socialist in content" (Art. 45), and popularizing physical culture and training (Art. 47). Article 48 stipulates that the state will develop universal free medical service and stresses preventive medical care.

The chapter as a whole emphasizes nationalistic values, and Article 46 in particular invokes those values in reference to the Korean language, stating that the latter must be defended against "the policy of the imperialists and their stooges to destroy it."

State Structure

The Supreme People's Assembly

Under the 1972 Constitution, the Supreme People's Assembly (SPA), a unicameral legislative body, is "the highest organ of State power" (Art. 73). Its deputies are elected to a four-year term by "universal, equal, and direct

suffrage by secret ballot" (Arts. 74, 75). The deputies comprise representatives of the workers, peasants, soldiers, and working intellectuals. ^{17/} Usually two regular sessions of about three to five days' duration are convened annually by the Assembly's Standing Committee. Extraordinary sessions may be convened when the Standing Committee deems it necessary, or by vote of one-third of the total number of deputies (Art. 77).

The SPA exercises legislative power by adopting or amending the Constitution, laws, and ordinances. In addition, it formulates the basic principles of domestic and foreign policy, approves the state economic plan and national budget, and decides on questions of war and peace. The SPA also elects the President of the DPRK, and elects and recalls other top government officials, such as Vice-Presidents of the DPRK, the Secretary and members of the Central People's Committee; members of the SPA's Standing Committee; the Premier of the Administration Council, the Vice-Chairman of the National Defense Commission, and the Presidents of the Central Court and the Central Procurator's Office. However, the Vice-Presidents of the DPRK, the Secretary and members of the Central People's Committee, the Premier, and the Vice-Chairman of the National Defense Commission can only be elected or recalled upon the recommendation of the President of the DPRK (Art. 76).

Items to be deliberated are submitted by the President, the Central People's Committee, the Standing Committee of the SPA, the Administration Council, or the Assembly's own deputies (Art. 80). Decisions are made by a majority vote of the delegates present, with the exception of constitutional

^{17/} Sŏk-pong Han, Chosŏn Minjujuŭi Inmin Konghwaguk kukka sahoe chedo [State and Social System of the Democratic People's Republic of Korea] 110 (Pyongyang, Kwahak Paekwa Sajŏn Ch'ulp'ansa, 1984).

amendments, which require a two-thirds vote of all SPA deputies (Art. 82). At present, a budget committee, a bill committee, and a credentials committee within the SPA assist in carrying out its work.

The SPA's constitutional powers and functions appear to be manifold, but in actual practice the SPA's legislative duty is simply to ratify decisions made by the Korean Workers' Party and the Central People's Committee. ^{18/} Even under the 1948 Constitution, the SPA had no independent initiative; its legislative actions were always subject to Party policy. ^{19/}

The Standing Committee of the SPA

The Standing Committee of the SPA, elected by the full Assembly, serves as its permanent body (Art. 85). It is comprised of a Chairman, three Vice-Chairmen, a Secretary, and 18 members (as of April 1985). ^{20/} The Chairman and Vice-Chairmen of the SPA Standing Committee concurrently hold the same positions in the SPA. Under the 1948 Constitution, when the Assembly was not in session, its Standing Committee was the highest government organ; the clause containing this provision was deleted from the 1972 Constitution. Among other powers, the Standing Committee under the former Constitution could promulgate laws, issue pardons, appoint and recall envoys, ratify or

^{18/} Chin-wee Chung, supra note 3, at 29.

^{19/} A North Korean reformist who advocated that the SPA, the highest organ of state power, be independent of the Workers' Party was branded as "reactionary." See "On 'The Problems Arising from the Administrative Act of the Democratic People's Republic of Korea,'" 6 Pŏphak nonmunjip 131 (1956).

^{20/} Directory of Officials of the Democratic People's Republic of Korea 17 (Washington, Directorate of Intelligence, 1985).

abrogate treaties, and receive foreign envoys. Its Chairman served as head of state. With the implementation of the 1972 Constitution, however, these powers were transferred to the newly-created office of President of the DPRK and the new Central People's Committee. Thus the 1972 Constitution reflects the reality of President Kim Il-sŏng's strong one-man rule.

Even though the Standing Committee's power was curtailed by the creation of the office of President and the Central People's Committee, under the 1972 Constitution the Standing Committee is still to examine and decide on bills and to amend laws and ordinances when the SPA is not in session. It also interprets the laws and ordinances already in force, convenes the regular and extraordinary sessions of the SPA, works with deputies to the SPA, works with committees of the SPA when the SPA is not in session, conducts the election of deputies to the SPA, prepares for the election of deputies to the local people's assemblies, and issues its own decisions (Arts. 87, 88). In addition, it has been accorded a new power, that of electing and recalling the judges and people's assessors of the Central Court (Art. 87, item 9).

The Presidency

The office of President (chusŏk) was newly created in the 1972 Constitution, which states that the President is head of state and represents the DPRK (Art. 89). The 1948 Constitution was silent about who was head of state; following Soviet practice, the Chairman of the Standing Committee of the SPA had served concurrently as head of state. Thus under the 1972 Constitution, the separation between head of state and head of the government was eliminated. The President, elected by the SPA for a four-year term

(Art. 90), is accorded all the powers normally held by a strong president. ^{21/} Kim Il-sŏng was elected as the first President of the DPRK immediately after the enactment of the new Constitution. Although in fact Kim Il-sŏng also serves as head of the Workers' Party, there is no formal tie between the positions of President of the DPRK and chairman of the Party.

The President is Supreme Commander of the Armed Forces and Chairman of the National Defense Commission. He promulgates laws and ordinances enacted by the SPA, the decrees of the Central People's Committee, and the decisions of the Standing Committee of the SPA. He directly guides the Central People's Committee and convenes and presides over the Administration Council. The President also has the authority to issue his own "orders," to grant special pardons, to ratify or abrogate treaties, and to receive foreign envoys (Arts. 91-97). As was noted earlier, some of these functions had been performed by the Standing Committee of the SPA under the 1948 Constitution.

The President is in theory accountable to the SPA for his actions (Art. 98), but there are no constitutional provisions that enable the SPA to enforce this article. Unlike other top government officials, the President is not subject to recall or removal. Nor are there any constitutional provisions that limit the number of terms he can serve. It should be noted that at the Sixth Party Congress, held in October 1980, Kim Chŏng-il, the son of Kim Il-sŏng, was installed as the second most powerful man in North Korea as part

^{21/} Chong-Sik Lee, supra note 3, at 195.

of Kim Il-sŏng's plan to establish a dynasty, with his son as heir-apparent, without regard to constitutional provisions. 22/

Without providing any further elaboration of their role, the Constitution simply states that the Vice-Presidents "assist" the President in his work (Art. 99). North Korean Vice-Presidents are not to succeed the President upon the latter's incapacitation or death. The role of the Vice-Presidents is purely ceremonial.

The Central People's Committee

The Central People's Committee (CPC), which was newly established under the 1972 Constitution, is the "highest leadership organ of State power" (Art. 100) and the top decision-making body. According to State and Social System of the DPRK, a 1984 North Korean publication, the CPC serves as the permanent "highest leadership organ of State power" when the SPA is not in session. 23/ It consists of the President of the DPRK, three Vice-Presidents of the DPRK, a Secretary, and 13 members (as of April 1985). All of these officials and members (except the President) are elected by the SPA for a term of four years on the recommendation of the President, and they may also be recalled by the SPA on the recommendation of the President.

In addition to the powers that were transferred to it from the SPA and its Standing Committee under the 1972 Constitution, the CPC has, among other powers, the power to shape domestic and foreign policy; to direct the

22/ Tai Sung An, supra note 11, at 60-61. See also B.C. Koh, "The Cult of Personality and the Succession Issue," in C.I. Eugene Kim and B.C. Koh, ed., Journey to North Korea: Personal Perceptions 25-41 (Berkeley, Institute of East Asian Studies, 1983).

23/ Sŏk-pong Han, supra note 17, at 113.

work of the Administration Council, local people's assemblies and committees, and judicial and procuratorial organs; to supervise the enforcement of the Constitution, laws, and ordinances of the SPA, the orders of the President of the DPRK, and the decrees, decisions, and directives of the CPC and to supersede decisions and directives of other state organs that contravene them; to establish or abolish ministries; to appoint or remove Cabinet members; to institute or change administrative divisions; to declare a state of war; to issue orders for mobilization in case of emergency (Art. 103); and to adopt or issue its own decrees, decisions, and orders (Art. 104).

The CPC originally established four commissions, on domestic policy, foreign policy, national defense, and justice and security (Art. 105, para. 1). By April 1985, four more commissions, on economic policy, legislation, parliamentary groups, and state inspection, had been added. ^{24/} The members of these commissions are appointed or recalled by the CPC (Art. 105, para. 2), with the exception of the Vice-Chairmen of the National Defense Commission, who are elected by the SPA on recommendation of the President.

The CPC is known as a "Super Cabinet" that exercises a mixture of executive, legislative, and judicial powers. According to Professor Chong-Sik Lee, it was created to supplant "the myth" of the superior role of the legislature and "the fiction" that Party and state have separate powers and authority, so that simply by doing away with duplication of effort greater efficiency would be achieved. ^{25/} Kim Il-sŏng made reference to the creation of the Central People's Committee and the people's committees in a speech he delivered on December 25, 1972:

^{24/} Supra note 20, at 25.

^{25/} Chong-Sik Lee, supra note 3, at 209.

The new State structure is built in such a way that the activities of administrative bodies are always supervised and controlled by the masses of the people. Under the new State structure...the People's Committees are separated from administrative bodies, and the former, which are composed of representatives of the workers, peasants, soldiers and working intellectuals, are to perform the function of exercising day-to-day supervision and control over the latter's activities so that the functionaries of the administrative bodies are able to do away with bureaucracy in their work and serve the people better as their servants. ^{26/}

A North Korean writer has commented that the separation of the people's committees from administrative organs provided for in the 1972 Constitution aimed at strengthening the monolithic leadership of Kim Il-sŏng over state organs and all state activities, thereby accelerating control of the whole society by the chuch'e idea. ^{27/}

It should be noted that there is considerable overlap in membership between the new Central People's Committee and the Politburo of the Party, with members of the latter monopolizing membership in the former. ^{28/} It is through this close relationship that the Party maintains its power, rather than on the basis of any direct statement made in the constitutional description of state structure.

The Administration Council

Under the 1972 Constitution, the functions of the central government are divided between the CPC, which makes policy and supervises its

^{26/} Kim Il-sŏng, supra note 2, at 41-42.

^{27/} Kŭk-p'yo Hong, "The Constitutional Provisions That Separate People's Committees from Administrative Organs Are a Legal Guarantee for Strengthening Activities of the People's Committees," 5 Sahoe kwahak 31 (1977).

^{28/} Ilpyong J. Kim, supra note 3, at 37; Chin-wee Chung, supra note 3, at 37; Youn-Soo Kim, supra note 3, at 288; Chong-Sik Lee, supra note 3, at 207-208.

implementation, and the Administration Council, which carries out the policy. Under the 1948 Constitution, the Cabinet, with Kim Il-sŏng as its head (premier), had exercised unlimited power by performing both the policy-making and policy-executing functions. The Cabinet was renamed the Administration Council under the 1972 Constitution.

The Council, defined by the 1972 Constitution as "the administrative and executive body of the highest organ of State power" (Art. 107), is composed of the Premier, Vice-Premiers, ministers, vice-ministers, commission chairmen, and other necessary members (Art. 108). The Premier is elected or recalled by the SPA on the recommendation of the President; other members are appointed or removed by the CPC on the recommendation of the Premier (Art. 103). The Council is responsible to the SPA, the President, and the CPC for its work. Since its decision-making power was taken away by the CPC, the Council is merely an administrative body that carries out decisions made by other organs. Ultimately the Council and Premier are under the direct control of the President. ^{29/}

The Council performs its day-to-day administrative functions by directing the work of ministries and other organs directly under its authority. Among other powers, it has the power to conclude treaties, guide defense work, maintain public order, and safeguard the rights of citizens. It also has the power to formulate the state plans for economic development and the implementing measures thereof and to adopt measures to strengthen the monetary and banking systems (Art. 109). In order to carry out its work, the Council is authorized to adopt decisions and issue directives (Art. 112).

^{29/} Ku-jin Kang, supra note 3, at 146.

Local Organs of State Power

In addition to performing the traditional functions of local government, the various units of local administration in North Korea also serve as organs of economic production and management. The 1972 Constitution provides for the carrying out of these functions by establishing People's Assemblies, People's Committees, and Administrative Committees in the provinces (and in municipalities directly under central authority), cities or districts, and counties. Thus the county is the lowest unit of local government; local organs that were established under the 1948 Constitution in towns and villages have been abolished. At the village level today there are no local organs of government; ^{30/} each village has been placed under the supervision of a Cooperative Farm Management Committee. Local organs at the county level are also charged with providing administrative and other types of guidance to the villages and to workers' settlements.

People's Assemblies have the power to approve local economic development plans and budgets and to elect or recall local officials, including judges and people's assessors, at the corresponding level. The Assemblies are also empowered to supersede inappropriate decisions and directives issued by local organs at corresponding and lower levels (Art. 118). However, the People's Assemblies only meet in regular session once or twice a year. An extraordinary session may be convened when the People's Committee at the

^{30/} Rinn-Sup Shinn, "Government and Politics," in Frederica M. Bunge, ed., North Korea: A Country Study 175 (3d ed., Washington, U.S. Govt. Print. Off., 1981). For further discussion of the subject, see Chang Hyun Cho, "The System of Local Government in North Korea," in Se-jin Kim and Chang Hyun Cho, ed., Korea: A Divided Nation 171-181 (Silver Spring, Md., The Research Institute on Korean Affairs, 1976).

corresponding level deems it necessary or at the request of at least one-third of the total number of deputies (Art. 119).

Under the 1972 Constitution, the authority to make and to execute policy is divided between the People's Committees and the Administrative Committees, along the lines of the changes made in the central government structure. According to State and Social System of the DPRK, however, "The People's Committee is the local organ of state power when the People's Assembly is not in session and at the same time serves as the administrative and executive body." ^{31/} No mention is made of the existence of the Administrative Committee, and so it appears that the People's Committee has taken over its function. ^{32/}

According to the same source, the People's Committee has additional powers, probably as a result of the demise of the Administrative Committee. ^{33/} Now the People's Committee implements the decisions and directives of the People's Assembly at the corresponding level and of the People's Committee at a higher level; convenes the sessions of the People's Assembly; and carries out work in connection with the election of deputies to the People's Assembly. Moreover, the People's Committee promotes adherence to the law-abiding life so that workers and all citizens will obey law and order conscientiously; organizes and carries out all administrative affairs at the local level; and prepares the local plan and adopts implementing measures as

^{31/} Sŏk-pong Han, supra note 17, at 115.

^{32/} A South Korean source reveals that the Administrative Committees at the provincial and county levels were replaced with Economic Guidance Committees at those levels in 1981. See Pukhan ch'ongnam, 1945-1982 [General Survey of North Korea, 1945-1982] 249 (Seoul, Pukhan Yŏn'guso, 1983).

^{33/} Sŏk-pong Han, supra note 17, at 115-116.

part of the development of the national economy. The Committee also compiles the local budget and adopts the implementing measures thereof; adopts measures to maintain public order, protect the interests of the state, and safeguard the rights of citizens; and directs the work of state institutions, enterprises, and cooperative organizations within its jurisdiction (Arts. 125 and 130).

The People's Committee is composed of a chairman, vice-chairman, secretary, and other members (Art. 124). It is accountable for its activities to the People's Assembly at the corresponding level and to the People's Committee at a higher level (Art. 127).

Elections

The 1972 Constitution provides in Article 74 that all People's Assembly representatives are to be elected by universal suffrage and by secret ballot. The elections that have been held thus far, however, have been pro forma, with only one Party-approved candidate running for each seat. It is reported that 100 percent of registered voters participate in the elections and that all the approved candidates win. Thus elections are simply exercises to demonstrate the Party's consolidated control rather than true political forums.

The constitutional provision for the secret ballot is essentially ignored. For example, recent coverage of the February 24, 1985, election of members to the provincial, municipal, and county People's Assemblies stressed the participation of Party and government and revealed which prominent members of the Korean Workers' Party Central Committee had voted for

which candidates, described by district and name. ^{34/} Since there was only one candidate for each slot, this information could hardly be regarded as real news. It was doubtless included in the Pyongyang domestic news service report as an indication of Party strength.

Administration of Justice

Courts

Unlike the 1948 Constitution, the 1972 Constitution specifies that the duty of the courts is to safeguard the power of the workers and peasants, the socialist system, the property of state and cooperative organizations, and the constitutional rights, lives, and property of the people (Art. 136). The courts must guarantee that all state and cooperative institutions and individuals observe the law and struggle against class enemies and lawbreakers, execute judgments, and conduct notarial work. As in other Communist countries, in addition to punishing lawbreakers the courts are expected to educate criminals and the public in observance of the law and loyalty to the country. Moreover, the court is officially described as "a powerful weapon of the proletarian dictatorship which executes the judicial policy of the Party and the State." ^{35/}

The Central Court (formerly the Supreme Court), located in Pyongyang, is the court of last resort and consists of criminal, civil,

^{34/} U.S. Foreign Broadcast Information Service, Daily report: Asia & Pacific, Feb. 25, 1985, p. D1.

^{35/} Chosŏn Minjujuŭi Inmin Konghwaguk sahoejuŭi hŏnpŏp haesŏl [A Commentary on the Socialist Constitution of the Democratic People's Republic of Korea] 87 (Pyongyang, Inmin Kwahaksa, 1973).

and arbitration chambers. Under the Code of Criminal Procedure, ^{36/} the Central Court has original jurisdiction over cases of especially grave offenses against state power and over crimes committed in the course of duty by judges and other high-level elected officials as well as over other cases, at its discretion. It has jurisdiction over appeals or protests against decisions of provincial or special courts and may examine extraordinary appeals or petitions for re-trial lodged by the President of the Central Court or the Procurator-General against cases decided by a lower court. In the case of such extraordinary appeals or petitions, a panel of three judges hears the case and a procurator from the Central Procurator's Office also participates. ^{37/} A decision or ruling of the Central Court may not be appealed except upon an extraordinary appeal lodged by the President of the Central Court or the Procurator-General at a plenary session of the Court. All the judges of the Court and the Procurator-General are required to be present at plenary sessions. ^{38/}

The Central Court supervises the judicial work of all the courts (Art. 141, para. 2). Provisions that are new in the 1972 Constitution state

^{36/} It has been reported that the Code of Criminal Procedure, issued on Mar. 3, 1950, was revised on Dec. 19, 1974. For more information about the judicial system of North Korea under the 1972 Constitution, see Sung Yoon Cho, The Judicial System of the Democratic People's Republic of Korea (Washington, Library of Congress, Law Library, 1974); and Chin Kim, "The Legal System," in Han-Kyo Kim, ed., Studies on Korea: A Scholar's Guide 343-346 (Honolulu, The University Press of Hawaii, 1980). For information on the judicial system under the 1948 Constitution, see Sung Yoon Cho, "Law and Justice in North Korea," 2 Journal of Korean Affairs 3-23 (1973).

^{37/} Art. 37 of the 1976 Court Organization Law, as cited by Kyu-sŭng Kim, "The System of Courts, the Procuracy, and Lawyers in the Republic," 25 Gekkan Chōsen shiryō 29 (1985). The original Court Organization Law, enacted on March 1, 1950, was revised on Jan. 10, 1976.

^{38/} Art. 38 of the 1976 Court Organization Law, as cited by Kyu-sŭng Kim, id.

that the Central Court is accountable for its activities to the Supreme People's Assembly, the President, and the Central People's Committee (Art. 142, para. 1) and carries out its judicial functions under the direction of the President and the Central People's Committee (Art. 103, item 3).

The provincial courts also consist of criminal, civil, and arbitration chambers and have original jurisdiction over cases involving important offenses such as crimes against the state and grave crimes against individuals. They serve as courts of second instance, hearing appeals of decisions rendered by the courts of first instance, the people's courts, which are at the city or county level. The people's courts have jurisdiction over most criminal and civil cases. Although North Korea has three levels of courts, it has adopted a two-trial system, which allows only one appeal.

The original Court Organization Law had established two kinds of special courts, military and transport, but the Transport Court, which heard cases of crimes committed against rail, land, and water transport systems, was abolished in August 1958. Under the 1972 Constitution, there are again two special courts, the military courts and the railroad courts. The military courts have jurisdiction over all crimes committed by members of the armed forces or security organs of the Ministry of Social Safety. Through a series of laws passed during the Korean War, their jurisdiction was broadened to cover nonmilitary cases in wartime. The military courts are to try cases within 24 hours after arrest and the sentences imposed are subject only to extraordinary appeal. The railroad courts have jurisdiction over criminal cases involving rail and water transport workers. ^{39/}

^{39/} Kyu-sŭng Kim, supra note 37; Masao Fukushima, supra note 3, at 271-272.

The functions of the arbitration chambers of the Central Court and the provincial courts require explanation. An arbitrator assigned to each chamber hears disputes between state enterprises and/or other social organizations in matters involving the non-fulfillment of contracts as well as injuries and compensation demands arising therefrom. The arbitrator decides a case by imposing a penalty or fine for the breach of contract. However, the arbitrator is not allowed to handle disputes connected with the collection of administrative fines, which are usually settled through administrative procedures, nor is he to handle tort claim disputes that are not in regard to contracts. ^{40/}

According to Article 134 of the 1972 Constitution, the judges and people's assessors of the Central Court are elected to terms of four years by the Standing Committee of the Supreme People's Assembly; judges and people's assessors of provincial and people's courts are elected to four-year and two-year terms, respectively, by the people's assemblies at the corresponding level. The 1948 Constitution lacked such a provision. People's assessors are laymen elected to share the bench with a professional judge in trials of first instance (Art. 137). Cases of second instance are handled by a bench of three judges. ^{41/} In theory the people's assessors enjoy the same rights as judges and participate in deciding questions of both law and fact. The president and judges of the special court are appointed or removed by the

^{40/} Kyu-sŭng Kim, *supra* note 37, at 41. *Pŏphak sajŏn* [Legal Dictionary] 605-606 (Pyongyang, Sahoe Kwahak Yŏn'guso, 1961), as cited by Noriaki Ouchi, "Problems of Enacting Laws After the Enactment of the Socialist Constitution of the DPRK," 1124 *Ajia keizai junpō* 15 (Aug. 1979).

^{41/} Art. 36 of the 1976 Court Organization Law, as cited by Kyu-sŭng Kim, *supra* note 37, at 30.

Central Court (Art. 135). Neither legal education nor practical legal experience is required for judgeship.

The courts play an educational role in that most trials are public and may be reported in the press. When state secrets are involved, or when otherwise required by law, the trial is closed to the public (Art. 138); the decision, however, must still be announced. In some cases in which counter-revolutionary crimes are involved, demonstration trials or mass public trials are held for their propagandist effect. Since public attendance at such trials is compulsory, they are held at sites carefully chosen by the Workers' Party for maximum political advantage. ^{42/}

Procuracy

Unlike the 1948 Constitution, the 1972 Constitution provides that "Investigation and prosecution are conducted under the coordinated leadership of the Central Procurator's Office, and all procurator's offices are subordinated to their higher offices and the Central Procurator's Office" (Art.145). To insure that the procurator will not be influenced by local organs of the state or by local conditions, the structure of the procuracy is completely centralized; unlike judges, who are elected by the Standing Committee of the Supreme People's Assembly and the People's Assemblies, procurators at all levels are appointed by the Central Procurator's Office. At present, there are procurators' offices in the cities and counties in which there are people's courts, provincial procurator's offices in each province, special

^{42/} In-fu Pang, "Structure and Operation of the Judiciary in North Korea," in Pukhan ch'onggam, 1945-1968 [Yearbooks on North Korea, 1945-1968] 929-931 (Seoul, 1968). For an account of mass trials, see Sung Yoon Cho, Senate Comm. on the Judiciary, 89th Cong., 1st Sess., The Church and State Under Communism: Religion in North Korea 7-9 (1965).

procurator's offices, and the Central Procurator's Office in Pyongyang. Another provision that is new in the 1972 Constitution states that the Central Procurator's Office is accountable to the Supreme People's Assembly, the President, and the Central People's Committee (Art. 146).

Like its counterparts in other Communist countries, the North Korean procuracy is responsible for the general supervision of legality, serving as the watchdog of the central authority. Article 144, item 1, of the 1972 Constitution provides that the procurator's office will exercise supervision to insure that state laws are properly observed by state and corporate organizations and by individuals. Under item 2 of the same Article, the procuracy is responsible for determining that the decisions and directives of state organs are not in conflict with the Constitution or the laws, ordinances, orders, decrees, decisions, and directives issued by the Supreme People's Assembly, the President, the Central People's Committee, the Standing Committee of the Supreme People's Assembly, or the Administration Council. Under Article 144, item 3, the procuracy has the functions of judicial supervision, exposure and indictment of criminals, and prosecution of cases for the state in court proceedings against citizens accused of crimes. Procurators are to protect thereby the present social system, the property of the state and of cooperative organizations, and the constitutional rights of individuals. Article 144, it may be noted, is a totally new provision in the 1972 Constitution. The procuracy is officially described there as "a powerful weapon of the proletarian dictatorship that executes the judicial policy of the Party and the State." ^{43/}

^{43/} Supra note 35.

The procuracy's powers in regard to criminal proceedings, coupled with its general supervisory power over the legality of operations of all state organs, make it potentially one of the strongest organs of the state. Although procurators are involved in all stages of the arrest, indictment, and prosecution process, they do not have any control over the actions of the secret police, and thus they have no role in the preparation of indictments or the prosecution of those arrested by the secret police on suspicion of committing political crimes.

Lawyers

Article 138 of the 1972 Constitution provides that "the accused is guaranteed the right to a defense." Without mentioning specifically how and to what extent this right is accorded in actual practice, an official publication of the North Korean Academy of Sciences stated in 1963 that the right to counsel is thoroughly guaranteed to the accused. ^{44/}

The 1948 Regulation Concerning Lawyers, which superseded a 1947 regulation of the same title, reorganized the existing lawyers' association as a voluntary social organization in Pyongyang and each province, under the supervision of the courts. ^{45/} Membership in the people's bar is granted by the standing committee of each association. The statutory requirements for

^{44/} Chōsen Minshu Shugi Jinmin Kyōwakoku no kokka, shakai taisei [State and social system of the Democratic People's Republic of Korea] 164 (Tokyo, Nihon Hyōronsha, 1966).

^{45/} Art. 10 of the 1948 Regulation Concerning Lawyers, Cabinet Decision No. 59, Nov. 1, 1948, as cited by Kyu-sŭng Kim, supra note 37, at 39.

membership are legal education or practical experience working in judicial organs. ^{46/}

Only members of a lawyers' association can practice law. According to Article 3 of the 1948 Regulation, a lawyer has three major functions. First, he provides the public with legal assistance and interpretation of the law, in compliance with an individual client's request. Second, he prepares petitions, contracts, agreements, and other legal documents for individuals, groups, state agencies, and enterprises. Third, he acts as defense counsel for the accused, the appellant, or the petitioner in a criminal case or as the representative of the plaintiff, the defendant, or other interested parties in a civil case.

Above all, the fundamental duty of the lawyer is to cooperate with the court in discovering the truth, in promoting justice, and in safeguarding the interests of the state and the people against criminals, and thereby defend and implement the policies of the Workers' Party. In the final analysis, a lawyer must become a good Party lawyer who knows how to defend Party interests on the basis of the principle of proletarian dictatorship. ^{47/}

In North Korea, the practice of law is not regarded as a lucrative profession. The lawyer practices in an office operated by the lawyers' association, which pays a fixed salary. The amount of a client's fee is

^{46/} Art. 13, supra note 45. For more information on bar membership, see Sung Yoon Cho, The Judicial System of the Democratic People's Republic of Korea, supra note 36, at 25.

^{47/} Kyōng-o Yi, "Certain Experiences Derived from Preparation of the Oral Defense in Criminal Cases," 11 Minju sabōp 21 (1959).

determined on the basis of a contractual agreement with the lawyers' association and the fee is paid directly to the group. ^{48/}

The Socialist Law-Abiding Life Guidance Committees

In the 1972 Constitution, there are two articles that deal with socialist legality:

Article 17. The law of the Democratic People's Republic of Korea reflects the will and interests of the workers, peasants and other working people, and it is consciously observed by all State organs, enterprises, social cooperative organizations and and citizens.

Article 67. Citizens must strictly observe the laws of the State and the socialist norms of life and socialist rules of conduct.

Kim Il-sŏng elaborated on this basic definition of socialist legality in 1977, when he delivered a speech, "Let Us Further Strengthen People's Government," which summarized the enforcement of the 1972 Socialist Constitution over the five years since its adoption, at the First Session of the Sixth Supreme People's Assembly on December 15. In discussing the elimination of bureaucracy, Kim originated the concept of the "socialist law-abiding life." ^{49/} This refers to the policy, based on the chuch'e idea, of strengthening the legal system and publicizing laws through mass campaigns.

There are two aspects to the "socialist law-abiding life": respect for public authority and conformity to "socialist norms" of life. According to a North Korean writer, "socialist law-abiding life" is defined as "social life that requires all members of socialist society to thoroughly obey legal

^{48/} Kyu-sŭng Kim, supra note 37, at 40.

^{49/} Kim Il-sŏng, Let Us Further Strengthen the People's Government 24-25 (Pyongyang, Foreign Languages Pub. House, 1977).

norms and rules and act accordingly." ^{50/} In other words, all the members are required to thoroughly obey legal norms and rules enacted by the socialist state (dictatorship of the proletariat) in order to lead an orderly, socialist law-abiding life.

In 1977, socialist law-abiding life committees were established in the Central People's Committee and in the people's committees at all levels of the provinces, cities, and counties. They are ad hoc committees that meet once a month. The committees usually consist of six people, including a chairman and a vice-chairman, who are selected from the procuracy, the social safety agency (police), and the people's committee of the district concerned; no members are selected from the court. The president of the people's committee serves concurrently as the chairman of the Socialist Law-Abiding Life Guidance Committee. ^{51/}

One of the important duties of these committees is to control by means of law the leading personnel of state and economic institutions in order to prevent them from abusing their power. The committees also work to "create a revolutionary atmosphere of observance of the law in the whole

^{50/} Yŏng-ch'ŏl Kim, Widehan suryŏng Kim Il-sŏng tongji kkeso palkyŏ chusin sahoejuŭi pŏmmu saenghwal e kwanhan iron [Theory of the Socialist Law-Abiding Life Enunciated by the Great Leader Kim Il-sŏng] 7 (Pyongyang, Kwahak Paekkwa Sajŏn Ch'ulp'ansa, 1980). Kŭlloja and Sahoe kwahak, two leading North Korean non-legal journals, have also several carried articles on the subject of the law-abiding life. And on December 15, 1982, Kim Chŏng-il, the son of Kim Il-sŏng, announced his own thesis, "On the Strengthening of Socialist Life," which elaborates on his father's theory. See Kyu-sŭng Kim, "On the One-Year Anniversary of the Essay 'On the Strengthening of Socialist Law-Abiding Life' by Kim Chŏng-il," 23 Gekkan Chŏsen shiryŏ 48-57 (1983).

^{51/} Atsushi Asai, "The Socialist Constitution of the Democratic People's Republic of Korea and the Development of the Principles of Legality," 52 Hŏritsu jihŏ 13 (1980). This article is based on the author's observations made during a visit to North Korea in July 1980. See also Noriaki Ōuchi, supra note 40, at 28.

society." ^{52/} The committee members and staff workers (called law commentators) are to make commentaries on particular laws and disseminate legal information to the citizens in the area, thereby strengthening the education of the people in the spirit of obedience to law. ^{53/}

The socialist law-abiding life committees are further empowered to supervise and control the law-abiding status of all the organizations, work places, social groups, and citizens in their jurisdiction. They are thus a powerful means of implementing state power. All state inspection agencies, the procuracy, and the police are subject to the oversight of the committees in the execution and enforcement of the law. ^{54/} The committees may directly handle law enforcement and inspection or entrust these functions to law-enforcement agencies. They may demand necessary data from various other agencies. They also work to strengthen education of workers in the provisions of the Constitution and the laws. ^{55/}

Since the socialist law-abiding life committees are empowered to supervise the observance of the law by all government and economic institutions, they apply strict legal sanctions against those who break laws and

^{52/} Ch'ang-söp Sö, Pöp kōnsöl kyōnghōm [Experiences in the Construction of Law] 141 (Pyongyang, Sahoe Kwahak Ch'ulp'ansa, 1984).

^{53/} Minju Chosŏn, a government newspaper, regularly reports on campaign activities related to the concept of the "socialist law-abiding life." See for example articles appearing on June 3, June 8, and Nov. 5, 1982; July 30, Aug. 13, Aug. 18, Aug. 28, Oct. 9, Nov. 9, and Nov. 19, 1983.

^{54/} Yōng-ch'öl Kim, supra note 50, at 73; Kyu-sūng Kim, "The Socialist Constitution and Its Incarnation in the Life of the State and Society," 22 Gekkan Chōsen shiryō 60 (1982).

^{55/} Ch'ang-söp Sö, supra note 52; Atsushi Asai, supra note 51.

regulations. The committees handle all types of violations, short of crimes, and impose administrative sanctions. ^{56/}

Basic Rights and Duties of Citizens

Basic Rights

There is a chapter on the basic rights and duties of citizens of the DPRK in both the 1948 and the 1972 Constitutions. ^{57/} Freedom of speech, the press, association, assembly, and demonstration are guaranteed today under Article 53 of the 1972 document. Citizens are also guaranteed inviolability of person and home, privacy of correspondence (Art. 64), and freedom of scientific, literary, and artistic pursuits (Art. 60). Able-bodied citizens have the "right to work," the right to choose occupations according to their skills, and the right to rest (Arts. 56 and 57). Free medical care and material assistance for those unable to work due to old age, illness, or handicap are also guaranteed in the Constitution (Art. 58).

There are some important differences between the 1948 and 1972 Constitutions in their provisions on rights of citizens. In the statement on the right to vote and to stand for office in the former document, the influence of the times can be seen. Thus, while both documents extend the right to elect and to be elected to all citizens except the insane and those

^{56/} Ch'ang-sŏp Sŏ, supra note 52, at 142.

^{57/} For more information on basic rights and duties granted under the 1972 Constitution, see Ku-jin Kang, "Fiction of Fundamental Rights in North Korean Constitution," 8 Vantage Point no. 4, 1-10 (1985); no. 5, 1-10; Tscholsu Kim, "Prospects for a Constitution for a United Korea, Based on a Comparison of the Constitutions of South and North Korea," 6 Korea & World Affairs 424-425 (1982); Bruce Cumings, "Human Rights in the Democratic People's Republic of Korea," in Human Rights in Korea 340-364 (New York, Asia Watch Committee, 1986).

deprived of political rights by court order, Article 12 of the 1948 version also excludes "pro-Japanese elements"; by 1972, such an exclusion was no longer considered necessary. The only other difference is that in the 1972 document (Art. 52) the voting age was lowered, from 18 years of age to 17.

There are provisions on religious freedom in both Constitutions, but the language used in the 1972 Constitution makes the guarantee seem less secure. Where originally Article 14 mentioned the "freedom of religious belief and of conducting religious services," Article 54 now gives citizens "freedom of religious belief and freedom to make anti-religious propaganda," leaving out any reference to the holding of services. There is thus an apparent imbalance between the passive right to believe and the active right to make propaganda against religion.

Both Constitutions mention the equal legal status of women and extend special protection to mothers, children, and the family unit. The 1972 Constitution also provides as follows:

The State affords special protection to mothers and children through maternity leave, shortened working hours for mothers of large families, a wide network of maternity hospitals, nurseries and kindergartens and other measures.

The State frees women from the heavy burden of household chores and provides every condition for them to participate in public life (Art. 62).

This Constitution does not, however, include the statement that was in Article 23 of the 1948 document on the equal status of children born out of wedlock.

The 1972 Constitution (Art. 61) also extends special protection to "revolutionary fighters, the families of revolutionary and patriotic martyrs, the families of People's Army men, and disabled soldiers...."

One protection that had been included in the 1948 Constitution (Art. 19) but which was dropped in the 1972 version was the freedom to run medium and small-scale industrial enterprises and to engage in commerce. This change can most logically be attributed to Kim Il-sŏng's position on the state of progress toward socialism. Indeed, Article 50 now includes the statement that the "rights and freedoms of citizens increase with the consolidation and development of the socialist system." 58/

Basic Duties

Both the 1948 and 1972 Constitutions have provisions on the duties of citizens of North Korea. Comparison of the two suggests that the difference between them can be ascribed to the political developments of the intervening years. The 1948 document included the duty to pay taxes; under the 1972 Constitution, taxes were abolished. While in 1948 citizens had the duty to abide by the Constitution and the law (Art. 27), in 1972 this was expanded to include observance of "the socialist norm of life and the socialist rules

58/ On September 14, 1981, North Korea acceded to the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on December 16, 1966. How these two covenants are being implemented in North Korea is not known. However, at the March-April 1984 session of the Human Rights Committee of the International Covenant on Civil and Political Rights, "members criticized a report submitted by North Korea on its human rights practices as too short and inadequate." The North Korean response was to "[deny that the] country had any problems at all." See Senate Comm. on Foreign Relations and House Comm. on Foreign Affairs, 99th Cong., 1st Sess., Country Reports on Human Rights Practices for 1984 795 (Jt. Comm. Print 1985). See also Multilateral Treaties Deposited With the Secretary-General: Status as at 31 December 1981 108, 117 (New York, United Nations, 1982. ST/LEG/SER.E/1). Bruce Cumings, who visited North Korea in 1981, was of the opinion that in the area of non-political human rights (health care, education, housing, women's rights, the right to employment and decent working conditions) North Korea does better than most developing countries. See Bruce Cumings, supra note 57, at 342.

of conduct" (Art. 67). Furthermore, citizens are now required to "display a high degree of collectivist spirit" and to "cherish" their collectives and organizations (Art. 68). Other new duties include preserving state and communal property (Art. 70) and being vigilant against imperialists and "hostile elements" (Art. 71). There is more ideological jargon in the provisions on citizens' duties in the 1972 Constitution, reflecting the slogans of the day. As a result, the duties of citizens are vaguely worded, so much so that these provisions could easily be used as a basis for suppressing opposition. 59/

Thus the Constitution outlines a wide range of rights, but in reality, with the government totally controlled by the Workers' Party, the state can freely control its citizens. Punishment of any "political crime," for instance, is severe. Free speech and freedom of the press may be guaranteed in one section of the Constitution, but elsewhere in the same document, North Koreans are required to observe "the socialist norm of life and the socialist rules of conduct." Moreover, Article 49 states that "rights and duties of citizens are based on the collectivist principle of 'one for all and all for one'." This means that "the group or social interest is put before the individual interest, and individual benefit is subject to social benefit" in all aspects of social life. 60/ Presumably, it also means that citizens are free only to the extent that they abide by the collectivist norms of life imposed by the Workers' Party.

59/ Ku-jin Kang, supra note 3, at 151.

60/ Supra note 35, at 80.

Conclusion

Constitutions of communist states typically are summations of existing political, economic, and social systems. The 1972 North Korean Constitution is no exception; it reflects the developments in North Korean society of the preceding two decades. The Constitution contains, inter alia, two key articles that define the nature of the state by providing that the DPRK exercises the dictatorship of the proletariat and that it is guided by the chuch'e idea of the Workers' Party. The Constitution also incorporates the Ch'ŏllima Movement, the Ch'ŏngsan-ni method, the Taean work system, and a new definition of property. All these programs and concepts had been developed in the years since the previous Constitution.

In addition, the Constitution contains the germs of future socio-economic programs. For example, the Three Revolutions Team Movement, inaugurated in 1973, the year after the Constitution was adopted, is foreshadowed by several articles. The "three revolutions" are those of ideology, technology, and culture. Article 11 prescribes "intensifying the ideological revolution," Article 25 claims that the "State accelerates the technical revolution," and Article 36 provides for "carrying out the cultural revolution." The Three Revolutions Team Movement has been viewed in North Korea in the last 12 years as the basic method to be used to build a society based on the idea of chuch'e.

The new Constitution changed the definition of the governing structure of the DPRK to more closely match reality. The central authority structure now consists of the SPA, the SPA's Standing Committee, the President of the DPRK, the CPC, a policy-making organ, and the Administration Council, a

policy-executing organ. The Presidency and the CPC were new creations and the Administration Council was renamed in the 1972 document. The SPA is defined by the Constitution as "the highest organ of State power," whereas the CPC is "the highest leadership organ of State power." It is thus difficult to determine purely by constitutional definition the hierarchical order of these two bodies. State and Social System of the DPRK, mentioned earlier, seems to clarify the matter; it states that the CPC serves as the highest leadership organ when the SPA is not in session. Under the 1948 Constitution, the SPA Standing Committee had been the highest organ of power whenever the SPA was not in session, and its chairman served as head of state.

Under the 1972 Constitution, the supremacy of the legislature has apparently been discarded and there is no separation of powers. The new CPC is the backbone of the entire state structure and as supreme organ exercises a mixture of executive, legislative, and judicial powers. The President, who heads the CPC, is also head of state, chief of the Party, and Commander-in-Chief.

The court and procuracy are each officially described as a "powerful weapon of the proletarian dictatorship which executes the judicial policy of the Party and the state." They are controlled and supervised by the CPC.

Although the authority to make and to execute policy is divided between local People's Committees and local Administrative Committees under the 1972 Constitution, according to State and Social System of the DPRK, it appears that the People's Committees have now taken over the functions of the Administrative Committees.

Article 67 of the Constitution reads, "Citizens must strictly observe the laws of the State and the socialist norm of life and the socialist rules of conduct." To implement this provision, Socialist Law-Abiding Life Guidance Committees were established in 1977 in the People's Committees and in the CPC. These ad hoc committees are another powerful means of implementing state power under the direction of the President, and all law enforcement agencies, including the procuracy, are subject to their oversight.

The impact of the Constitution as a whole is to serve the authoritarian nature of the regime. Human rights under the 1972 Constitution are different from those provided for in a liberal democracy, as they are based on the collectivist principle. The duties of citizens as outlined in the document reinforce the idea of the value of the communal good over that of the individual. The two programs developed pursuant to provision in the 1972 Constitution, the Three Revolutions Team Movement and the Socialist Law-Abiding Life Guidance Committees, undoubtedly aid the goal of control of the whole society by the Workers' Party through the ideological tool of chuch'e. Furthermore, the consolidation of the state structure allows for the concentration of power in the hands of one man, President Kim Il-sŏng, who has ruled North Korea for over forty years.